

**TRADING TERMS AND CONDITIONS**

***These Trading Terms and Conditions are divided into three sections:***

***Section A:***           ***Applies for supply of all Services***

***Section B:***           ***Supplementary – applies only for supply of repair Services***

***Section C:***           ***Supplementary – applies only for supply (by way of sale) of Equipment/Parts***

## TRADING TERMS AND CONDITIONS

### SECTION A – GENERAL TERMS

#### 1. DEFINITIONS

##### 1.1 In this Agreement:

**Agreement** means this agreement and any special conditions and Schedules to this agreement

**Business Hours** means between the hours of 9:00am and 5:00pm Monday to Friday (excluding any weekend or public holiday)

**Charges** means the amount payable by the Customer for the supply of the Services, being the amount set out in the Quote or otherwise agreed between the Parties or as varied in accordance with clause 19A below (if any)

**Commencement Date** means the date set out in the Quote or the date that the Supplier commences the supply of the Services (whichever comes first)

**Consequential Loss** means and includes (but is not limited to) any loss of profit, loss of opportunity, loss of business, loss of production, loss of time, diminution of goodwill or share value or loss of reputation

**Credit Application** means the credit application completed (or provided) and signed by the Customer either prior to or contemporaneously with this Agreement

**Customer** means the recipient of the supply of the Services as set out in the Quote or otherwise

**Default Event** means where:

- (a) the Customer makes default in payment of any monies due to the Supplier but unpaid on its due date (whether or not a formal demand for payment has been made); or
- (b) the Customer suffers an Insolvency Event (for which no demand or notice is required); or
- (c) the Customer breaches or is found to be in breach of any of the Supplier's Policies and/or any Laws
- (d) the Customer breaches or is found to be in breach of any representation or warranty given by the Customer to the Supplier under this Agreement; or
- (e) the Customer breaches any term of this Agreement (other than in respect of the payment of monies) and fails to remedy that breach within 7 days of receiving written notice from the Supplier of the breach

**Default Interest** means the amount that is the prevailing rate of pre-judgment interest as set by the Supreme Court in the State or Territory in which the Services are supplied or, if no such rate is set, the rate that is the prevailing rate of interest as set out in the *Penalty Interest Rates Act 1983 (Vic)*

**Equipment** means the equipment to be hired or sold by the Supplier to the Customer or to be serviced by the Supplier (as the case may be) as set out in the Quote

**Excluded Services** means the following services provided or to be provided by the Supplier to the Customer:

- (a) the supply, by way of hire, of Equipment purchased specifically for the Customer or otherwise made available to the Customer for hire (whether on a permanent, long-term or short-term basis);
- (b) the supply of Equipment under a Rent-To-Buy arrangement;
- (c) the supply of repair and maintenance services which is governed by a separate agreement between the Supplier and the Customer; and/or

- (d) any other arrangement or agreement between the Supplier and the Customer which expressly excludes this Agreement

**Fair Wear and Tear** means the deterioration of the Equipment through ordinary use having regard to the condition in which the Equipment will operate and otherwise as set out in the Fair Wear and Tear Policy located at the Supplier's website

**Force Majeure** means an act of God, national emergency, war, insurrection, riot, act of terrorism, pandemic, epidemic, flood or anything outside of the reasonable control of a Party

**Insolvency Event** means where the Customer commits an act of bankruptcy, goes into liquidation, administration or receivership, is unable to pay its debts as and when due, ceases to carry on business or a material part of it, a resolution is passed for the winding-up of the Customer or execution of distress is levied against the Customer or its assets

**Invoice** means the invoice to be issued by the Supplier to the Customer for the performance of the Services

**Laws** means any laws of any nature (whether State or Federal and whether Acts, regulations, by-laws, orders, proclamations or standards (including Australian Standards)) and which apply in relation to the business and operations of the Supplier and Customer and includes (without limitation) any laws made under the *Fair Work Act 2009 (Cth)*, *Corporations Act 2001 (Cth)*, *Modern Slavery Act 2018 (Cth)*, OHS Laws and/or any anti-bribery, anti-corruption and/or anti-money laundering laws

**OHS Laws** means any workplace or occupational health and safety laws that apply in the State or Territory in which the Services are supplied (including whether such laws are under statute, common law or otherwise)

**Parties** means, collectively, the Supplier and Customer

**Parts** means any spare parts (whether new or used) sold by the Supplier to the Customer pursuant to a Quote

**Payment Terms** means the terms of payment (including, without limitation, as to the payment of any deposit and the time for payment) that is:

- (a) set out in the Quote; or
- (b) otherwise, is 14 days from the date of Invoice

**Policies** means any policies published by the Supplier from time to time and available on its website at and includes (without limitation) the Supplier's *Code of Conduct*, *Modern Slavery Statement*, *Anti-Bribery & Corruption Policy* and *Whistleblower Policy*

**Purchase Order** means any purchase order issued by the Customer to the Supplier authorising the supply of Services under this Agreement

**Quote** means a quote provided by the Supplier to the Customer for the supply of the Services (or any one of them), which must set out (without limitation) the Customer, the Services to be provided, the Price, the Term (if applicable) and any other commercial terms governing the supply of the Services

**Services** means all services provided or to be provided by the Supplier to the Customer which are not Excluded Services and includes (without limitation):

- (a) the supply of repair and maintenance services – see also *Section B – Repair Services*;
- (b) the supply, by way of sale and purchase, of Equipment (including Used Equipment) and

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Parts – see also Section C – Sale of Equipment and Parts;

**Site** means, where applicable, the Customer's site where the Services are to be performed

**Site Survey** means, where applicable, the survey provided to the Customer and prepared by the Supplier in respect of the Site, which survey sets out the conditions of the Site and the Customer's requirements under this Agreement

**Supplier** means Adaptalift GSE Pty Ltd (ACN 601 464 573)

**Term** means the term of the Agreement as specified in the Quote or otherwise until the Agreement is ended in accordance with this Agreement

### 2. APPLICATION AND ORDER OF PRECEDENCE

#### 2.1 Application

This Agreement governs the terms of the supply from the Supplier to the Customer for the Services but does not govern the terms of the supply of any Excluded Services.

#### 2.2 Order of Precedence

To the extent of any inconsistency, the following terms and conditions take precedence:

- (a) first – the Quote;
- (b) second – any further or separate agreement between the Parties governing the supply of the Services and which is signed by the Parties contemporaneously with, or subsequent to, this Agreement;
- (c) third – the Credit Application; and
- (d) fourth – this Agreement.

#### 2.3 Customer Terms

By agreeing to the Quote and accepting supply of the Services from the Supplier, the Customer expressly acknowledges and agrees that this Agreement applies for the purpose of the supply and any Customer terms of supply (whether provided on a Purchase Order or otherwise) are excluded and do not apply for the purpose of the supply.

#### 2.4 Variation

Any variation to this Agreement must be in writing and signed by both Parties to be valid and binding on the Parties.

#### 2.5 Prior Agreements

The terms of this Agreement replace and supercede all prior agreements between the Parties (whether in writing, verbal or otherwise) governing the supply of the Services from the Supplier to the Customer.

#### 2.6 Credit Application

The Customer acknowledges, agrees and represents that the representations made by the Customer in the Credit Application are true and correct and apply and are repeated for the purpose of any supply under this Agreement.

2.7 The Customer is required to only complete one Credit Application to commence supply of any Services from the Supplier. Any further or additional supply will be provided in accordance with clause 4 below without the need to complete a further Credit Application and the Customer acknowledges and agrees that such further or additional supply will be subject to the terms of this Agreement (except where the supply relates to any Excluded Services).

#### 2.8 Application of Sections in this Agreement

For the purpose of this Agreement:

- (a) Section A applies for the supply of all Services covered by this Agreement; and
- (b) Sections B & C apply only in respect of those Services covered by those Sections.

2.9 For the avoidance of doubt, if the Services supplied pursuant to a Quote consist of:

- (a) the supply of repair and maintenance services – only Sections A and B apply; and
- (b) the sale/purchase of Equipment and/or Parts – only Sections A and C apply.

### 3. TERM OF AGREEMENT

#### 3.1 Term

This Agreement commences on the Commencement Date and continues for the Term.

3.2 If the Customer continues sourcing supply of the Services (whether the original Services provided or any further or additional Services), the supply is (or continues to be) provided pursuant to the terms of this Agreement

### 4. SERVICES

#### 4.1 Engagement of Supplier

The Customer engages the Supplier to perform the Services set out in the Quote and Purchase Order (if any).

#### 4.2 Quote

Prior to performing the Services, the Supplier must provide to the Customer a Quote.

4.3 The Quote constitutes an offer by the Supplier to supply the Services on the terms of that Quote.

#### 4.4 Purchase Order

Subject always to clauses 2.2 and 4.5, the Customer must issue a Purchase Order for the supply of the Services set out in the Quote (or otherwise to be performed) and the issuing of a Purchase Order by the Customer constitutes irrevocable acceptance of the Quote and the terms of this Agreement.

4.5 If the Supplier does not provide a Quote – or if the Customer does not issue a Purchase Order – but the Supplier still supplies the Services as requested by the Customer, the Customer must pay for the Services (and this Agreement otherwise applies for the provision of the Services) unless the Customer proves that it requested the Supplier not to provide the Services (the onus of which is on the Customer). This clause 4.5 supplements clause 13.6 (Variation) below.

### 5. CUSTOMER OBLIGATIONS, WARRANTIES & REPRESENTATIONS

5.1 The Customer must:

- (a) notify the Supplier in writing of any specific purpose for which the requested Services will be put and otherwise satisfy itself that the Services it has requested from the Supplier are suitable for its use and fit for purpose;
- (b) (where applicable) provide to the Supplier a work area or location at the Site to enable the Supplier to perform the Services;
- (c) ensure that the Site is safe and affords the Supplier a safe working environment that complies in all respects with all OHS Laws;
- (d) pay the Charges for the Services in accordance with the Payment Terms;
- (e) at its cost, provide to the Supplier any induction or other training necessary to permit the Supplier to attend on the Site;
- (f) comply with all reasonable directions of the Supplier;
- (g) hold the insurances required by clause 11;
- (h) provide to the Supplier all reasonable assistance to enable the Supplier to perform the Services

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- (including by providing access to water, electricity and any specific tools or other equipment owned by the Customer); and
- (i) provide to the Supplier a list of all personnel who are authorised to request the Supplier to perform Services under this Agreement.
- 5.2** The obligations set out in clause 5.1 are in addition to any further obligations set out in Sections B, C and D (as applicable).
- 5.3 Proper Authority**  
The Customer warrants and represents that the person signing the Quote, issuing the Purchase Order or otherwise agreeing with the Supplier to perform the Services on behalf of the Customer, is properly authorised to do all such matters on its behalf and to enter into this Agreement and bind the Customer to the obligations set out in this Agreement.
- 5.4 Warranties and Representations**  
The Customer warrants and represents to the Owner that:
- (a) it has read and understood the Supplier's Policies and agrees that at all times during the operation of this Agreement, its business and operations will be conducted in compliance with – and will not put the Supplier in breach of – the Policies;
- (b) it has read, understood and agrees with the contents of the Site Survey (where applicable and where provided by the Supplier); and
- (c) it will conduct its business and operations in accordance with all Laws.

## 6. SUPPLIER OBLIGATIONS

- 6.1** The Supplier must:
- (a) perform the Services in a timely manner and in accordance with all relevant legislation and standards;
- (b) perform the Services with the level of skill and care reasonably expected of a service provider experienced in performing the Services;
- (c) report immediately to the Customer any damage to any Equipment or any maintenance and/or repairs necessary to the Equipment and which it does not consider falls within the Services;
- (d) (where applicable), advance or procure for the benefit of the Customer any warranty in respect to the supply of the Services;
- (e) use full trained, competent and qualified service technicians employed or engaged by the Supplier to perform the Services;
- (f) comply with all reasonable directions of the Customer;
- (g) hold the insurances required by clause 11;
- (h) obtain, maintain and comply with all permissions, licences, consents, approvals, certificates and/or permits necessary for the performance of the Services; and
- (i) if reasonably requested by the Customer, provide all reports and documents regarding its performance of the Services under this Agreement.

## 7. INVOICING AND PAYMENT TERMS

- 7.1 Payment of Charges**  
The Customer must pay to the Supplier the Charges and all other monies due and payable to the Supplier under this Agreement without set-off or deduction.
- 7.2** Unless the Parties otherwise agree, payment of the Charges must be paid to the Supplier by direct debit into the Supplier's nominated account and the

Customer agrees that it must complete and sign all relevant authorisations and forms and give all necessary directions as is necessary in order to facilitate payment by direct debit.

- 7.3** The Charges must be paid by the Customer in accordance with the Payment Terms.

**7.4 Deposit**

The Customer acknowledges and agrees that if it is required (in accordance with the Payment Terms or as otherwise set out in the Quote) to pay to the Supplier a deposit prior to the Supplier supplying the Services, then:

- (a) unless this Agreement or any supply under this Agreement is terminated due to a breach by the Supplier – the deposit is non-refundable; and
- (b) without prejudice to sub-clause (a) above or any other rights the Supplier may have under this Agreement, the deposit may be applied against any loss or damage suffered by the Supplier arising from any breach or termination by the Customer of this Agreement.

**7.5 Calculation of Charges**

Subject to clause 19A below, the Charges set out in the Quote are fixed for that Quote only and remain valid for acceptance for 30 days. If not accepted within 30 days, the Supplier may issue a new Quote for an amount and on terms in the Supplier's sole discretion.

- 7.6** The Supplier makes no representation or warranty that any further or additional Quote for the performance of the same Services will be for the same Charge or on the same terms.

- 7.7** After a Quote is accepted by the Customer, any variation to the Services to be performed under the Quote can only be agreed by the Parties in writing and signed by both Parties, failing which the variation is of no effect. Any additional Charges that may arise or accrue for the performance of such variation is to be paid by the Customer.

**7.8 Invoicing**

The Supplier must invoice the Customer for the Charges at the completion of the Services or at such other time or intervals as advised by the Supplier from time to time (or otherwise as set out in the Quote).

- 7.9** The Invoice issued by the Supplier is prima facie evidence for all purposes that the amount stated in the Invoice is due and payable by the Customer (save for manifest error).

**7.10 Set-Off**

The Supplier may set-off any amount due and payable by the Supplier to the Customer (whether under this Agreement or otherwise) against any amount due and payable by the Customer to the Supplier under this Agreement.

- 7.11** The Customer must not at any time or for any reason deduct or set-off any monies payable by it under this Agreement.

**7.12 GST**

Any GST payable on the supply of the Services is to be paid by the Customer in addition to the Charge.

**7.13 Default Interest**

If any amount the Customer is required to pay under this Agreement is not paid by the due date, interest accrues on that amount until it is paid by the Default Interest (compounded daily).

## 8. OPERATION & EXCLUSION OF WARRANTIES

- 8.1** This clause 8 applies subject to any express warranties given by the Supplier in Sections B and C (as applicable).

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- 8.2 Subject to clause 8.1 above and this Agreement generally, all warranties, representations, promises, conditions or statements regarding the Services, whether in writing, verbal or to be implied, are expressly excluded to the fullest extent permissible by law.
- 8.3 Without limiting this clause 8, the Supplier is not liable to the Customer under any circumstances for any damage to Equipment (whether sold to the Customer or owned by the Customer) that is due to Fair Wear and Tear.
- 8.4 **Consequential Loss**  
Notwithstanding any other provision of this Agreement, the Supplier is not liable to the Customer for any Consequential Loss.
- 8.5 **Limit of Liability**  
To the extent that the exclusion of any implied terms is prohibited by legislation or for any liability of the Supplier arising under any warranty given under this Agreement, the Supplier's liability will be limited – at the Supplier's sole election – to one or more of the following:
- (a) in the case of the supply of Equipment or Parts:
    - (i) the replacement of the Equipment or Parts;
    - (ii) the re-supply of equivalent Equipment or Parts;
    - (iii) the repair of the Equipment or Parts; or
    - (iv) the payment of the cost of repairing, replacing or of acquiring equivalent Equipment or Parts; and
  - (b) in the case of the supply of Services (not being Equipment or Parts):
    - (i) the supply of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again.

**9. SUB-CONTRACTING & PERSONNEL****9.1 Right to Sub-Contract**

The Supplier may, in its sole discretion, sub-contract or otherwise arrange for a third party to perform any of the Services or to discharge any of its obligations under this Agreement. The Supplier must give to the Customer details of the proposed sub-contractor.

- 9.2 If the Supplier engages a sub-contractor in accordance with this clause 9, it agrees that:
- (a) it will ensure that the sub-contractor is aware of – and will comply with – the Supplier's obligations under this Agreement as if it was a party to this Agreement; and
  - (b) it (the Supplier) will remain principally liable to the Customer for any work performed by the sub-contractor.
- 9.3 The cost of any Services performed by the sub-contractor are payable by the Customer.
- 9.4 **Exclusion of Personnel**  
The Customer may request the Supplier to exclude certain personnel from attending at a Site to perform the Services. In making this request:
- (a) the Customer must give to the Supplier written notice of the proposed individual(s) it wishes to exclude and the reason for the exclusion;
  - (b) the Customer must at all times act reasonably and for just cause; and
  - (c) the Supplier must consider and comply with the request (if it is satisfied that the request is made reasonably and with just case).
- 9.5 The Customer is not required to give notice – and the Supplier must remove any personnel – where the individual(s) has engaged in serious or wilful misconduct or has acted in a way that has or may

immediately and materially impact the Customer's business and operations.

**10. TERMINATION****10.1 Termination for Default Event**

The Supplier may terminate this Agreement in the event of a Default Event by notice in writing to the Customer.

**10.2 Termination for Convenience**

Except where otherwise set out in Sections B or C, either Party may terminate this Agreement (without reason) by giving to the other Party written notice of its intention to terminate no less than 30 days' prior to the proposed date of termination.

**10.3 Effect of Termination**

If this Agreement is terminated or repudiated by a Party (whether under this clause 10 or otherwise), then, subject to any other provision in this Agreement:

- (a) unless the Parties otherwise agree, the Supplier must complete any Services that are the subject of a Quote (and/or Purchase Order) or which has otherwise been requested by the Customer or is incomplete;
  - (b) save for sub-clause (a) above, the Supplier must immediately cease providing any Services;
  - (c) all monies due and payable by one Party to the other must immediately be paid in full (including for any Services completed in accordance with sub-clause (a) above); and
  - (d) all accrued rights or obligations of a Party survive.
- 10.4 For the avoidance of doubt, the effects set out in clause 10.3 above apply subject to any specific termination provisions set out in Sections B and C (if any), with the effect that any specific termination provisions set out in those Sections take precedence over clause 10.3.

**11. INSURANCES**

11.1 This clause 11 applies in addition to any other obligation set out in Sections B and C (if any).

**11.2 Required Insurances**

Each Party must hold the following insurances with a reputable insurer approved by the Supplier (in its sole discretion):

- (a) product and public liability insurance up to a maximum of \$20,000,000.00 for any one event; and
  - (b) workers' compensation insurance in the State or Territory in which the Services are performed.
- 11.3 Any insurance required to be held by a Party in accordance with clause 11.2 above must be maintained until the completion of the Services or the Term of this Agreement (whichever ends later) and for a period of five (5) years after completion or end (as the case may be).
- 11.4 On request, each Party must provide to the other certificates of currency or other documents proving their compliance with this clause 11.
- 11.5 A Party must ensure that it does not do or omit to do anything which may prejudice any insurance held by it and promptly notify the other if any insurance is to lapse or cancel.
- 11.6 If a Party fails or refuses to obtain the insurances required by this clause, the other Party may effect such insurance on behalf of that Party and recover from that Party the cost of holding the insurance.



**TRADING TERMS AND CONDITIONS****12. PPS PROVISIONS**

12.1 Words and phrases used in this clause 12 have the same meaning as in the PPSA.

**12.2 Acknowledgements and Grant**

The Customer acknowledges and agrees that:

- (a) this Agreement may be a PPS Lease;
- (b) this Agreement creates a Security Interest in favour of the Supplier for the purposes of the PPSA;
- (c) the Customer grants to the Supplier a Security Interest in the Equipment and this Agreement, which secures the punctual payment of all amounts owed or which may be owed by the Customer to the Supplier under this Agreement;
- (d) the Security Interest created by this Agreement extends to the Equipment and all and any proceeds arising from any dealing with the Equipment;
- (e) the Supplier may register this interest on the Register to perfect the Security Interest;
- (f) the Security Interest granted to the Supplier is also a Purchase Money Security Interest for the purpose of the PPSA; and
- (g) any Security Interest created by this Agreement attaches or otherwise takes effect immediately upon the Customer entering into this Agreement.

**12.3 PPS Notice(s)**

If under the PPSA the Customer may waive its right to receive a notice, such waiver is expressly given by the Customer to the Supplier.

12.4 For the purposes of enforcement under the PPSA and to the extent permitted by the PPSA, the Customer agrees that the following provisions of the PPSA do not apply – sections 125 (obligation to dispose of or retain collateral), 130 (notice of disposal), 132(3)-(4) (statement of account), 134(2) (retention of collateral notice), 135 (notice of retention), 137 (persons entitled to notice may object), 142 (redemption of collateral), and 143 (reinstatement of security agreement).

**12.5 Release of Security Interest**

Within 5 business days of expiry or termination of this Agreement or the delivery and expiry of any Services supplied under this Agreement – and provided the Supplier has otherwise complied in all respects with the terms of this Agreement and all monies accrued and/or due and payable have been paid by the Customer in full – the Supplier will apply to the Register to remove any Security Interest registered on the Register against the Customer (and, where applicable, the Equipment).

**13. GENERAL PROVISIONS****13.1 Force Majeure**

If a Party is affected by an event of Force Majeure (the **Affected Party**), then:

- (a) the Affected Party must take all reasonable steps to minimise or remove the event;
- (b) if despite sub-clause (a) above, the event continues and prevents a Party from performing all of its obligations under this Agreement, the obligations of both Parties are suspended during – but no longer than – the period of the event;
- (c) if the event only affects part (but not all) of the Affected Party's obligations, the suspension set out in sub-clause (b) above applies only in respect of that part (but not the whole Agreement); and
- (d) if the event affects the whole of the performance of the Agreement and continues for six months'

or more, this Agreement may be terminated and clause 10.3 applies.

**13.2 Notices**

Any notice to be given under this Agreement is to be given in writing and to the persons identified on the Quote and Credit Application. The notice is deemed to have been served:

- (a) if sent by express post – on the day that is 2 business days after it is sent;
- (b) if sent by ordinary post – on the day that is 3 business days after it is sent;
- (c) if sent by email – on the day the email is sent, unless it is sent on a day that is not a business day or after 5:00pm, in which case it is deemed to be sent on the next business day; or
- (d) if hand delivered – on the day it is delivered.

**13.3 Severability**

If any provision of this Agreement is invalid in the State or Territory in which it is entered, that provision is to be read down to the extent of its invalidity and if that is not possible, it is to be severed from the Agreement without otherwise affecting the operation of this Agreement.

**13.4 Entire Understanding**

This Agreement contains the entire understanding of the Parties concerning the subject matter of the Agreement and supercedes, terminate and replaces all prior agreements and communications between the Parties in respect of the performance of the Services (but not the Excluded Services).

**13.5 No Reliance on Representations**

Save where expressly stated in this Agreement, both Parties acknowledge and agree that neither has relied on any representation, warranty or undertaking of any kind by the other Party in relation to the subject matter of this Agreement.

**13.6 Variation**

- (a) No variation of this Agreement will be valid unless it is in writing and agreed and signed by both Parties.
- (b) Notwithstanding the above, if the Customer requests a variation to the Services to be performed and the Supplier supplies the requested variation (whether or not the variation has been agreed in writing), the Customer must pay for the variation in addition to the Services.

**13.7 Waiver**

The Parties agree that:

- (a) a failure to exercise, delay or grant an indulgence in respect of a right does not operate as a general waiver;
- (b) a single or partial exercise of a right does not preclude a further exercise of that right (whether in part or full);
- (c) a waiver of one breach does not operate as a waiver of any other breach; and
- (d) there is no general waiver of any right or power unless the Party with that right or power expressly waives it by notice in writing.

**13.8 Governing Law**

This Agreement is governed by the laws in force in the State or Territory in which the Services are supplied and/or performed and the Parties submit to the exclusive jurisdiction of that State/Territory in the interpretation and enforcement of this Agreement.

**TRADING TERMS AND CONDITIONS****SECTION B: REPAIR SERVICES****14. APPLICATION – SECTION B**

- 14.1 This Section B supplements Section A (General Terms) and contains additional terms where the Services supplied by the Supplier consists of the supply of repair and maintenance services.
- 14.2 If there is any inconsistency with the terms set out in Section A and this Section B, the terms of this Section B take precedence to the extent of the inconsistency.
- 14.3 Words and phrases used in this Section B have the same meaning as in Section A

**15. DEFINITIONS**

- 15.1 In this Section B:
- Confidential Information** means any information, technical knowledge, training, assistance, guidelines, specifications, drawings, contracts, business dealings and any other information given by the Provider to the Recipient and includes (without limitation):
- this Agreement;
  - the Quote; and
  - the fact that the Parties have entered into this Agreement and agreed for the Supplier to provide the Services to Customer under this Agreement
- Provider** means the Party providing the Confidential Information to the Recipient
- Recipient** means the party receiving the Confidential Information from the Provider

**16. SUPPLIER OBLIGATIONS**

- 16.1 This clause 27 supplements clause 6 above.
- 16.2 The Supplier agrees to:
- where covered by the Quote, maintain any equipment in reasonable condition and in good and proper working order, subject always to Fair Wear and Tear; and
  - unless required as part of the Services, not store any poisonous, dangerous, explosive, corrosive or flammable liquids, gas or oil at the Site.

**17. SUPPLIER WARRANTIES**

- 17.1 The Supplier warrants that the Services it supplies will:
- be rendered with due care and skill and by persons competent to perform the Services and by persons with all necessary licences, permits and consents;
  - be rendered in a timely and diligent manner;
  - comply with all standards, laws and regulations relating to the provision of such Services; and
  - otherwise will be provided in accordance with clause 16 above.

**18. CUSTOMER OBLIGATIONS**

- 18.1 This clause 18 supplements clause 5 above.
- 18.2 The Customer agrees to:
- ensure that any equipment covered by the Services is used at all times in accordance with the requirements of the manufacturer's operation manual in a skilful and proper manner and by suitable qualified and competent persons in possession of all relevant certificates, permits and licences;
  - perform daily operator checks on any equipment covered by the Services and as specified in the operational and/or maintenance manual or otherwise as notified by the Supplier;

- make available to the Supplier any equipment covered by the Services during Business Hours or otherwise at mutually agreed and acceptable times.

**19. CONFIDENTIALITY**

- 19.1 The Provider will, from time to time, provide to the Recipient the Confidential Information.
- 19.2 **Obligations of Confidentiality**  
In receiving the Confidential Information, the Recipient acknowledges and agrees that:
- the Confidential Information is provided solely for the purpose of the Recipient to fulfil its obligations under this Agreement and will be used solely for this purpose;
  - the Confidential Information remains the property of the Provider;
  - it will take all necessary measures to retain the confidentiality of the Confidential Information; and
  - it will not disclose the Confidential Information to any other person or entity without the consent of the Provider or in order to obtain professional (legal or financial) advice.
- 19.3 **Exceptions to Confidentiality**  
The obligations set out in this clause 30 do not extend to any Confidential Information that is:
- already in the public domain (other than by reason of a breach of this clause 30); or
  - required to be disclosed by law or Court order, provided always that the Recipient first gives to the Provider notice of the requirement prior to disclosing it.
- 19.4 **Dealing with Confidential Information**  
Upon the expiration or termination of this Agreement, the Recipient must immediately on demand return to the Provider any Confidential Information in its possession, including any medium that the Confidential Information has been disseminated to.
- 19.5 The obligations in this clause 30 survive expiration or termination.

**19A. VARIATION TO SERVICE CHARGES**

- 19A.1 Where the Services being supplied to the Customer under this Agreement consist of the on-going supply of repair and/or maintenance Services under this Section B, the Customer acknowledges and agrees that the Supplier may from time to time review the Charges to be payable for those Services and the Supplier may (and is entitled to) increase the Charges by notice in writing to the Customer. In respect of such increase (if any) and the rights conferred on the Supplier under this clause 19A, the Parties each acknowledge and agree that:
- any increase in the Charges is to be a fair and reasonable increase only and is not to be excessive;
  - the obligation on the Supplier to give written notice is an obligation to use all reasonable and best endeavours to notify the Customer, including by sending it to the Customer contact as recorded in the Supplier's database or with whom the Supplier typically communicates with the Customer (with email communication an acceptable form of notice);
  - the notice must set out the reason(s) for the increase, the amount of the increase and the date that the increase is to take effect (which

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must not be less than 21 days from the date of the notice); and

- (d) if the Supplier gives a notice in accordance with this clause 29.4, the increase applies on and from the date set out in the notice (and the Customer must pay the varied Charges on and from that day).

## SECTION C: SALE OF EQUIPMENT AND PARTS

### 20. APPLICATION

- 20.1 This Section C supplements Section A (General Terms) and contains additional terms where the Services supplied by the Supplier consist of the sale of Equipment or Parts.
- 20.2 If there is any inconsistency with the terms set out in Section A and this Section C, the terms of this Section C take precedence to the extent of the inconsistency.
- 20.3 Words and phrases used in this Section C have the same meaning as in Section A.

### 21. DEFINITIONS

- 21.1 In this Section C:

**Restocking Fee** means the amount that is 15% of the value of the Part(s) being returned in accordance with clause 25

**Termination Fee** means the amount that is 15% of Charge for the Equipment sold to the Customer under this Section C

**Used Equipment** means any Equipment sold by the Supplier to the Customer that is not purchased new but is purchased second-hand

**Warranty Period** means, unless the Parties otherwise agree in writing to a different period:

- (a) for Used Equipment – the period that is calculated from the date that the Equipment is delivered or collected (as the case may be) and which ends at the end of the period set out in the Quote or, if not in the Quote, on the day the Equipment is delivered or collected (i.e. 0 days); or
- (b) for Equipment that is not Used Equipment – the period that is calculated from the date that the Equipment is delivered or collected (as the case may be) and which ends at the period set out in the Quote or, if not in the Quote, the period that is given by the manufacturer of the Equipment; or
- (c) for Parts – the period that is calculated from the date that the Parts are delivered or made available to the Customer or installed on the Customer's Equipment (whichever is the earlier) and which ends at the period set out in the Quote or, if not in the Quote, the period that is given by the manufacturer of the Parts

### 22. ORDERING, DELIVERY & INSPECTION

#### 22.1 Ordering

The Supplier must place an order for any Equipment to be supplied as soon as reasonably practicable following acceptance of a Quote.

- 22.2 The Customer acknowledges that once an order is placed it cannot be cancelled and if the Customer purports to cancel after accepting a Quote, clause 23 below applies.

#### 22.3 Delivery

Delivery dates or times given by the Supplier are approximate only and are not to be construed in any way as a guarantee that it will be delivered by that date.

- 22.4 The Supplier must take all reasonable endeavours to deliver by the delivery date but if it fails to do so, this does not constitute a breach or repudiation of this Agreement.

- 22.5 The Supplier is not in any way liable for any delay in delivery (including, without limitation, any penalty for delayed delivery).

- 22.6 Delivery is deemed to occur on the day that the Equipment is either made available for collection by the Customer or delivered to the Customer's Site (whichever applies).

#### 22.7 Inspection

The Customer must inspect any Equipment and/or Parts immediately on delivery and must notify the Supplier within 24 hours of delivery of any defect or failure to deliver in accordance with the Quote.

- 22.8 If no notice is given in accordance with clause 22.7 above, it is deemed that the Equipment and/or Parts comply with the Quote and the Customer is deemed to have accepted the Equipment and/or Parts.

#### 22.9 "As-Is" Basis – Used Equipment

If the Equipment being sold is Used Equipment, the Customer acknowledges and agrees that it has inspected – or had the opportunity to inspect – the Used Equipment and accepts the Used Equipment on an "as-is" basis, with the effect that:

- (a) the Customer acknowledges and agrees that the Supplier has made no – and the Customer has not relied on any – representation or warranty as to its condition or fitness for purpose (other than where otherwise stated in the Quote); and
- (b) it is purchased and accepted by the Customer in the condition it is delivered (and otherwise in accordance with the terms as set out in the Quote); and
- (c) the Customer's rights to notify of a defect in clause 22.7 above is limited to any defects that:
- (i) are not set out in the Quote or could not reasonably have been known or ascertained by the Customer at the time of signing the Quote or otherwise consist of the wrong supply; and
- (ii) materially affect the performance of – and the Customer's use of – the Used Equipment.

#### 22.10 Obligation to Take Delivery

Further to clause 22.6 above, the Customer agrees that – unless otherwise agreed in writing with the Supplier – it (the Customer) will take delivery and possession of the Equipment as soon as reasonably practicable (and in any event, within 7 days) after being notified by the Supplier that the Equipment is ready for delivery/collection (as the case may be) and otherwise pay for the Equipment in accordance with the Payment Terms. The Customer acknowledges and agrees that the time stipulation set out in this clause 22.10 is of the essence and if this clause 22.10 is breached, the Supplier may (without prejudice to any other rights arising from the breach) terminate this Agreement insofar as it relates to the supply of the Equipment, in which case clause 22.11 below applies.

- 22.11 If the Supplier terminates the Agreement in accordance with clause 22.10 above then, further to clause 10 above, the Purchase Order is deemed to



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be cancelled and (without prejudice to any other rights the Supplier may have arising from such breach and cancellation), clauses 23.3 and 23.4 below applies in respect of such cancellation.

### 23. NO CANCELLATION

- 23.1 The Customer acknowledges that if it has issued a Purchase Order further to a Quote, the Purchase Order constitutes irrevocable acceptance of the Quote.
- 23.2 Further to clause 23.1 above, the Customer acknowledges and agrees that a Purchase Order for the supply of Equipment under this Section C may not be cancelled without the written consent of the Supplier (which consent may be given or withheld in the Supplier's sole discretion and subject to any terms that the Supplier considers necessary).
- 23.3 If the Customer cancels any Purchase Order or fails or refuses to accept any supply under this Section C, it agrees that:
- (a) clause 7.4 of this Agreement applies in respect of the deposit (if any); and
  - (b) it is liable for, and indemnifies the Supplier against, all losses suffered by the Supplier arising out of the cancellation, including (without limitation) the Termination Fee as a liquidated sum (which is due and payable by the Customer on demand and which may be offset against the deposit (if any) received by the Supplier)
- 23.4 The Customer acknowledges and agrees that the Termination Fee:
- (a) does not limit the amount the Supplier may recover from the Customer arising from the Customer's cancellation; and
  - (b) is fair and reasonable having regard to (amongst other things) the fact that the Equipment has not been used or sold elsewhere, has been purchased or made available to the Customer specifically at the Customer's request and the Supplier has (or may have) ongoing financial obligations with regards to the Equipment.

### 24. TITLE AND RISK

#### 24.1 Title

Title in the Equipment and/or Parts remains with the Supplier until payment in full is received from the Customer in accordance with the Payment Terms.

- 24.2 Until payment of the Charges is received by the Supplier in full, the Customer holds the Equipment and/or Parts as bailee only and the Customer must ensure that the Equipment/Parts are retained in their original state, not mixed and are maintained in a satisfactory and working condition.
- 24.3 If the Customer sells or otherwise disposes of the Equipment and/or Parts prior to payment being received in full, the proceeds of such sale are held on trust for the Supplier and a Security Interest (being a purchase money security interest) is granted by the Customer in the Equipment and/or Parts (or the proceeds of the sale of such Equipment and/or Parts) in accordance with clause 12 above.
- 24.4 Risk
- Notwithstanding clauses 24.1 – 24.2 above, risk in the Equipment and/or Parts passes to the Customer immediately upon the Customer collecting the Equipment/Parts or the Equipment/Parts being delivered to the Customer's Site (whichever is applicable).

### 25. RETURNS

#### 25.1 Right of Return

Subject to the Customer's rights as set out in clauses 22.7 – 22.8 (Inspection) and 26 (Warranty), the Customer:

- (a) can return Parts purchased subject to clause 25.2 below; but
- (b) cannot return any Equipment sold (including Used Equipment).

#### 25.2 Return of Parts

If the Customer wishes to return Parts purchased from the Supplier then (subject to clauses 22.7 – 22.8 and 26), the following conditions apply:

- (a) any return must be requested within 14 days from the date of purchase, failing which the right of return lapses;
  - (b) no Parts may be returned that have been specially ordered or manufactured at the request of the Customer;
  - (c) the Parts must be returned in their original condition, in the same packaging (if applicable), unopened, unmarked, in a saleable condition and not having been used;
  - (d) if the Parts are returned in a Damaged state or otherwise in breach of sub-clauses (b) or (c) above, the Supplier may (in its sole and absolute discretion) reject the request for return;
  - (e) the Customer must return the Parts at its (the Customer's) own cost and risk; and
  - (f) the Customer must pay to the Supplier the Restocking Fee.
- 25.3 If the Customer returns Parts in full compliance with clause 25.2 above, the Supplier must either refund the Charges payable for the Part(s) (less the Restocking Fee) or (if requested by the Customer) supply alternative Parts up to the value of the Parts being returned (taking into account the Restocking Fee).
- 25.4 If the Customer returns Parts that it alleges are defective (and otherwise covered by clause 26.2 below) but which are subsequently determined not to be defective, the Customer must pay to the Supplier the Restocking Fee plus a reasonable testing fee as a debt due and payable by the Customer. This clause does not limit the right of the Supplier to recover for any other loss, cost or damage it has suffered by the return of the Parts under this clause 25.4.

### 26. WARRANTIES

#### 26.1 Warranty Period – Equipment & Parts

Subject to clause 26.3 below, the Supplier warrants the major components of the Equipment (including Used Equipment, where relevant) and Parts for the Warranty Period.

#### 26.2 Warranty – Supplier Obligations

Subject to clause 26.3 below, if during the Warranty Period the Equipment/Parts fail or prove defective in workmanship, the Supplier will (at its sole election) repair, replace or pay for the cost of repairing/replacing the Equipment/Parts (including, where applicable, any delivery charges applicable for such repair/replacement).

#### 26.3 Warranty Exclusions – General

The warranty given by this clause 26 does not apply if the Equipment/Parts are damaged or fail due to any reason for which the manufacturer of the Equipment/Parts excludes liability under its warranty as provided to the Supplier. The effect of this clause 26.3 is that:

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- (a) the Supplier will provide to the Customer the same warranty as it receives from the manufacturer of the Equipment/Parts (and subject to the same exclusions); and;
- (b) it is the responsibility of the Customer to check and confirm the terms of the manufacturer's warranty (and if the Customer accepts delivery of any Equipment/Parts, it is deemed to have accepted the terms of the manufacturer's warranty in respect of that Equipment/Parts).

**26.4 Warranty Exclusions – Specific (Used Equipment)**

Further to clause 26.3 above and subject to any other matter set out in the Quote, the warranty given by this Agreement for Used Equipment extends to cover only major components and the structure of the Used Equipment and does not extend to cover any of the following on the Used Equipment (the condition of each of which the Customer acknowledges and agrees it is – or had the opportunity to be – aware of prior to accepting the Quote):

- (a) brakes, including brake pads and shoes;
- (b) tyres;
- (c) batteries;
- (d) hoses and hose fittings;
- (e) starter motor; and/or
- (f) parts that are used or would typically be used as part of regular service and maintenance of the Equipment.

**26.5 Implied Terms and Warranties**

Except as provided above, all express and implied warranties, guarantees and representations as to merchantability, description, quality, suitability or fitness for purposes are otherwise expressly excluded to the maximum extent permissible by law. If such terms cannot be excluded by law, the liability of any breach of such implied term is limited (at the Supplier's option) in accordance with clause 8.5 of this Agreement.

**26.6** If the purchase by the Customer is the purchase of Used Equipment, the Customer expressly acknowledges and agrees that clause 22.9 above applies in precedence to this clause 26.**26.7** For the avoidance of doubt, this clause 26 applies subject to clause 8 above (and, specifically, clause 8.4 takes precedence to any rights under this clause 26).